debtor summons is not execution, then the order of the Assistant Registrar is a nullity:

I cannot accept this argument: whatever may be the exact purport of Order 3 rule 69, I hold that it does not prohibit the judgment-creditor from taking out a judgment-debtor summons under Section 342 after the expiration of 48 hours. On the present issue, I hold that the power to order the payment of instalments was in this case reserved to the Court which passed the decree in the appeal, that is, to the Supreme Court.

I hold that the Assistant Registrar acted *intra vires* in making the order, and I reject the preliminary objection.

The costs of hearing the preliminary objection must be borne by S. Sithambaram.

I direct the Assistant Registrar to restore the matter to the list for further consideration.

Order accordingly.

[APPELLATE CIVIL JURISDICTION]

MILLS J.

November 2, 1938.

O.R.M.M.S.M. LETCHUMANAN CHETTIAR .....Plaintiff-Appellant

vs.

1. LIM BOON SWEE and

2. YEOH GEE LEONG (f).....Defendants (Respondents.)

[BATU PAHAT CIVIL SUIT No. 21 of 1930]

Practice—Execution of decree—Surat Sementara—Whether rights of occupant attachable —F.M.S. Civil Procedure Code, Sections 283 (i) and 294.

An application by the Judgment-Creditor for attachment and sale of the debtor's right of occupancy and interest in certain land held under Surat Sementara was refused by the Assistant Registrar on the ground that such right arises *ex contractu* and is therefore not attachable under Section 283(i) of the F.M.S. Civil Procedure Code. On appeal to the Judge, *held*, the approved occupant under a Surat Sementara has no rights in *rem* but only a right, in certain events, to sue the State for damages. Such right is a 'mere right to sue for damages' within the meaning of proviso (e) of Section 283, and is therefore not liable to attachment and sale.

Tan Ho Cher, trading etc. v. *Yeo Poh* (1932), 1 M.L.J. 48 followed; *S.R.M.S. Palaniappa Chettiar* v. *Lim Heng Hiu* (1933), 2 M.L.J. 307 distinguished.

APPEAL to Judge from Order of Assistant Registrar.

The facts and arguments sufficiently appear from the judgment.

M. V. Pillai for Plaintiff-Appellant (*ex parte*).

MILLS, J.—The plaintiff, alleging to have an unsatisfied decree passed against the defendants, on the 3rd September, 1938, made an application to the Court under Section 253 of the Civil Procedure Code "praying for execution of the said decree by attachment and sale of the 1st defendant's property namely:—

> all the right of occupancy and interest, if any, in all those 1/3 undivided share in all those two pieces of lands, held under S.S. Nos. 77/27 and 282/23....."

On the 1st October, 1938, the Assistant Registrar refused to allow the attachment on the ground that the rights conferred by a Surat Sementara arise *ex contractu* and therefore are not attachable under Section 283 (i) of the Civil Procedure Code. Against this refusal the plaintiff appeals to the Judge. He contends that the first defendant is an approved occupant under Rule 7 of The Land Rules, 1929, and by that rule is deemed to have a permanent, transmissible and transferable right, interest and occupancy in his land "as set out in Section 35" (now Section 40) of the Land Enactment: therefore the interest of the first defendant may be attached and sold under Section 294 of the Civil Procedure Code. He also quotes the case of *S.R.M.S. Palaniappa Chettiar* v. *Lim Heng Him* (1933), 2 M.L.J. p. 307 (wrongly printed 207), in which Burton, J. ordered the sale of land held under a Surat Sementara.

But in that case the point was not in issue whether the land could be attached and sold; it was assumed that it could be, and the point in question was whether the person to whom the land had been hypothecated had the right to have the land sold free of incumbrance, and the right to have a declaration that he was entitled to rank as a preferential creditor. It is true that in the above case the Court ordered the land to be sold and presumably the State acquiesced in the transfer of the approved occupant's rights to the purchaser at the sale, but in my respectful opinion the Court was not justified in ordering the sale of the land.

On the other hand, I respectfully agree with the decision of Thorne, J. in the case of *Tan Ho Cher Trading etc.* v. *Yeo Poh* (1932), 1 M.L.J. p. 48, that a person who occupies State land in Johore under a Surat Sementara has no registrable interest in the land or indefeasible title

within the meaning of the Land Enactment. In other words, the approved occupant has no rights *in rem* but only a right *in personam* against the State; that is to say, only the right, founded on contract, to sue the State for damages if he is refused a title after complying with the necessary requirements of the Land Enactment and Rules made thereunder.

His rights, I hold, are "mere rights to sue for damages" within the meaning of Proviso (e) of Section 283 of the Civil Procedure Code.

Such rights are expressly stated to be not liable to attachment or sale.

I hold that the Assistant Registrar acted correctly in refusing to attach and sell the rights of the first defendant in the Surat Sementara in question.

I dismiss the appeal.

Appeal dismissed.